

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SAMUEL JEFFREY, :
: _____
Plaintiff, : 19-CV-2658 (VEC)
: _____
-against- :
: _____
: ORDER
: _____
CITY OF NEW YORK, JANE DOE and JOHN
DOE, :
: _____
: _____
Defendants. :
----- X

VALERIE CAPRONI, United States District Judge:

WHEREAS on October 21, 2019, Defendant moved to dismiss Plaintiff's Complaint (Dkt. 16);

WHEREAS on January 2, 2020, the Court ordered Plaintiff, who is represented by counsel, to respond to Defendants' motion to dismiss by January 10, 2020, and warned Plaintiff that failure to file an opposition would lead the Court to treat the motion to dismiss as unopposed (Dkt. 19);

WHEREAS notice of the Court's order was electronically mailed to Plaintiff's counsel on January 2, 2020. *See* Dkt. 19;

WHEREAS Plaintiff has not filed an Opposition nor has he responded in any way to the Court's January 2 Order;

IT IS HEREBY ORDERED THAT:

1. Defendants' motion to dismiss is GRANTED. By failing to address any of Defendants' arguments in support of their motion to dismiss, Plaintiff has abandoned his claims. *See Hutson v. N.Y.C. Police Dep't*, No. 15-CV-8797, 2017 WL 727544, at *3 (S.D.N.Y. Feb. 23, 2017) (dismissing Plaintiff's *Monell* claim as abandoned because he failed to respond

to or even mention Defendants' arguments to dismiss the claim); *Sullivan v. City of N.Y.*, No. 14-CV-1334, 2015 WL 5025296, at *4 (S.D.N.Y. Aug. 25, 2015) (in a Section 1983 case, denying plaintiff's motion to reconsider dismissal of claims against some defendants on the basis that plaintiff abandoned those claims because he did not respond to defendants' motion to dismiss); *Brandon v. City of N.Y.*, 705 F. Supp. 2d 261, 268 (S.D.N.Y. 2010) (in a Section 1983 case, dismissing some of plaintiff's claims as abandoned on the basis that he did not raise any arguments opposing defendants' motion to dismiss those claims).

2. Although the Court dismisses Plaintiff's claims as abandoned, the Court also notes that his claims are independently time-barred. Plaintiff alleges that the incident giving rise to his claims occurred on October 22, 2015. Dkt. 1. Plaintiff did not file the complaint in this case until March 22, 2019. *Id.* Section 1983 actions filed in New York are subject to a three-year statute of limitations. *Hogan v. Fischer*, 738 F.3d 509, 517 (2d Cir. 2013) (citing *Owens v. Okure*, 488 U.S. 235, 249-51 (1989); *Pearl v. City of Long Beach*, 296 F.3d 76, 79 (2d Cir. 2002)). Because Plaintiff's claims accrued more than three years before the filing of his complaint, the § 1983 claims are time-barred. Plaintiff's state law claims are time-barred as well. New York General Municipal Law requires that a plaintiff asserting state tort law claims against a municipal entity or its employees acting within the scope of their employment must commence the action within one year and ninety days from the date on which the cause of action accrued. N.Y. Gen. Mun. Law § 50-i (McKinney). Because Plaintiff's claims accrued more than one year and ninety days before the filing of his complaint, his state law claims are time-barred.

The Clerk of Court is respectfully directed to close the open motion at docket entry 16, dismiss the Complaint with prejudice, and mark this case closed.

SO ORDERED.

Date: January 13, 2020
New York, New York



VALERIE CAPRONI
United States District Judge